

Mississippi River/Gulf of Mexico Action Plan (4503F)
c/o U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC, 20460

Dear Sir:

I appreciate the opportunity to comment on the United States Environmental Protection Agency's (USEPA) " Draft Action Plan for Reducing, Mitigating, and Controlling Hypoxia in the Northern Gulf of Mexico."

The Mississippi River watershed drains approximately 40 percent of the United States, carrying nutrients, sediment and other pollutants from the landscape to the Gulf of Mexico. The Committee on Environment and Natural Resources (CENR) of the White House Office of Science and Technology Policy concluded that nitrogen is the nutrient most severely impacting the Mississippi River and Gulf systems. Nitrate loads in the Mississippi River have increased 300 percent in the last 30 years, to nearly one million tons per year. The CENR report stated about 90 percent of the nitrogen deposited in the Gulf of Mexico comes from nonpoint sources such as agriculture, urban runoff and atmospheric deposition. Most of the nitrogen comes from farmland in southern Minnesota, Iowa, Illinois, Indiana and Ohio where large amounts of nitrogen from fertilizer and manure are applied to agricultural lands. According to the report, animal manure alone contributes 15 percent of the nitrogen to the Gulf. Municipal and industrial point sources together contribute 11 percent of the nitrogen to the Gulf system.[1]

Gulf hypoxia is a complex problem that will require a range of measures to bring it under control. USEPA's Draft Plan outlines a comprehensive, rational approach to the problem that the League generally supports. I believe there are, however, additional issues that should be examined and several areas where the Plan could be strengthened.

These comments are organized as follows: I begin with general comments about the Draft Plan and conclude with specific comments of the provisions therein. Specific comments are referenced to sections of the Plan as published in the Federal Register (Volume 65, Number 133; Pages 42690 - 42697).

I. General Comments

USEPA proposes to employ existing regulatory and non-regulatory programs as its initial approach to controlling hypoxia. Given the advanced state of development of both regulation of point source discharges and voluntary, incentive-based programs designed to address nonpoint sources, this choice is reasonable. However, it must be understood that existing programs have historically not been directed to the control of water quality problems of a comparable scope and magnitude. Because the Plan is essentially a "work in progress," it seems reasonable that necessary adjustments in program implementation would become evident throughout the initial five-year planning period. Provisions for revisiting specific program elements should be incorporated into the Plan's framework at annual, or perhaps biennial,

intervals.

In addition, the Plan's reliance on existing programs creates the potential for conflict with other program efforts that rely on the same staff, resources, and funding streams. USEPA proposes the creation of new funding sources, but the availability of such funds is far from assured. If current funding is all that is available, addressing the hypoxia problem will necessitate difficult choices about allocating funding and other resources at all levels of government involved, yet the plan provides no structure or mechanism for this dialog. Prudent planning dictates that all contingencies should be recognized.

In this same vein, the Plan relies heavily, some would argue primarily, on federal agricultural conservation programs that are scheduled for reauthorization during the life of the Plan. No indication is given as to how the Plan would or could be adjusted to respond to changes in federal farm policy that may change, reduce, or even eliminate critical programs like Conservation Reserve, Wetlands Reserve, and Environmental Quality Incentives. Again, the plan should recognize this possibility.

Finally, while USEPA's overall strategy is clear, the specific elements of this strategy are substantially lacking in detail. When adopted, USEPA's final plan should provide additional clarity with respect to individual implementation activities. USEPA should include in the Plan the specified resources which will be allotted to the various sources of nitrogen pollution in the Gulf, and these allotments should be based not only on the percentage of nitrogen contribution to the Gulf, but also on the potential success of this assistance to offset current nitrogen loads to the water systems. For instance, the Plan should include the proposed financial and technical assistance programs, estimated costs included, which would address nitrogen contributions from agricultural runoff. The resources allotted to agricultural runoff problems should be greater than those allotted for municipal and industrial sources, if it is determined to contribute a greater percentage of nitrogen pollution to the Gulf, as reported in the CENR report.

II. Specific Comments

Coastal Goal: Of the three options USEPA offers for the Coastal Goal, Option 1A seems best able to substantially relieve Gulf hypoxia and provide measurable goals for progress toward that end. I recommend that Option 1A be adopted in the final Plan.

Option 1B is unacceptable because it is tied to the effect of nutrient loading, not the source. The extent to which other factors, such as the volume of the Mississippi/Atchafalaya River discharge or climatic conditions, may influence the areal extent of the hypoxic zone could not be accounted for. Tracking progress by this method may lead to erroneous indications of program effectiveness and dilute efforts to address hypoxia control over the long term.

Option 1C is wholly unacceptable because it contains no specific targets to be achieved or progress to be measured. It is simply a narrative statement of program intent, not a goal.

Implementation Actions: I support the continuation of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force for the purposes identified in this section. However, I am concerned about the reliance on

the assumptions that agencies involved will be provided with new authority and new funding to implement the Plan. Certainly, I will support both new funding and new authority to the extent that they are necessary for the success of the Plan. I recommend that USEPA also consider implementation with existing resources in the Final Plan.

I would also like to reiterate my concern about the lack of detail provided for the ten enumerated "short term actions." This deficiency should be addressed in the Final Plan.

Finally, I offer the following comments with respect to specific short-term actions proposed:

#5 - I question the necessity for delaying implementation of this action until Fall, 2002. While I recognize that much remains to be learned about the relative contributions of the various sub watersheds, I also recognize that the Committee on Environmental and Natural Resources Integrated Assessment of Hypoxia in the Northern Gulf of Mexico has provided enough information to support targeting specific watersheds immediately.

#9 - I see no compelling reason why an assessment of the modification of US Army Corps of Engineers projects should be delayed until 2003. Changes in Corps project operations, particularly their management of the navigation pools on the Upper Mississippi and Illinois Rivers, have the potential to make immediate and substantial contributions to nutrient reductions. This potential should be explored as soon as possible.

#10 - As stated previously, I believe that assessment and modification of the program should be a continuous feature of the plan within the initial five-year time frame.

Key Roles and Responsibilities: The Plan identifies a wide range of critical stakeholders, from individual landowners to federal agencies. Each of these stakeholders has a different array of capabilities, concerns, and responsibilities. While the Plan recognizes that collaboration and cooperation among these many players is essential for success, it is not clear how their active support and participation will be assured. This will be particularly critical in cases where implementation of the plan may detract from or even conflict with a particular individual's or agency's primary objectives.

I support the involvement of the US Army Corps of Engineers with respect to their management of Corps projects in the basin. However, I question why significant attention has not been devoted to the Corps' wetland permitting activities pursuant to Section 404 of the federal Clean Water Act. It appears counterproductive at best to devote so much attention to wetland restoration in the Plan and not address the issue of permitted wetland losses.

Agricultural drainage, particularly drainage wells and tiling, can play a critical role in degraded water quality, fish kill events and wetland drainage, and is a leading contributor to water quality problems in the Upper Midwest. The impacts of agriculture drainage systems were not discussed in this document, nor were methods to control its contribution of nitrogen and other pollutants to the Mississippi and Atchafalaya River Basins. Most conservation programs do not fund measures to improve drainage tiles or systems, thereby necessitating additional funding if USEPA is to adequately address the impact of agricultural drainage systems on the region

's impaired watersheds.

The Plan seems to take for granted that the States, Tribes and other agencies will redirect their resources to support Plan implementation. I question whether USEPA has the authority, or the ability, to provide suitable incentives to assure necessary changes in these. Does USEPA have the authority to compel States and Tribes to direct their State Revolving Funds to support the Plan, irrespective of previously established priorities? Can USEPA assure that Section 319 funds will be devoted to Plan implementation? The Plan is liberal with references to how other agencies will redirect their efforts. I have substantial concerns about how accurately the Plan reflects the level of commitment on the part of other stakeholders and, should that level of commitment be inadequate, how USEPA could or would address the resulting deficiency.

Funding the National Effort: Clean Rivers/Clean Gulf Budget Initiative: The final area of major concern involves the funding sources outlined in the Plan.

The extent to which the funding proposal involves current appropriations channeled through existing programs is not clear. Similarly, the level of new funding thought to be necessary is also not specified. If current funding is to be emphasized, USEPA should estimate how much money is to be diverted from existing, established programs to support the Plan. Many of the programs enumerated enjoy wide support and are substantially under-funded at current levels. It is questionable that wholesale redirection of these funds would be likely, particularly in those programs where nutrient reduction is not a primary goal.

If new funding is needed, the Plan should provide an estimate of the amount of new money required and its potential sources. In only one instance did USEPA provide a possible budget offset. The plan is otherwise silent on new sources of revenue, if any, that could be directed toward implementation of the plan.

Thank you for the opportunity to bring these comments to your attention.

Yours sincerely,
Robert E. Rutkowski, Esq.

cc: John Podesta

2527 Faxon Court
Topeka, Kansas 66605-2086
Fax: 1 785 379-9671
E-mail: r_e_rutkowski@hotmail.com